

FILED

FEB 27 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

La Von Haney,

NO. C 97-20132 JW

Petitioner,

ORDER CLOSING CASE

v.

Steven Cambra Jr., Warden,

Respondent.

A docket report for this case shows that it was "reopened" on April 16, 2004 and that it remains pending before the Court. In fact, the case is no longer pending. This Order clarifies the status of the action and orders the Clerk of Court to close the case.

This is a habeas corpus case, docketed as No. 97-20132-JW (hereafter, "1997 Habeas"), which was filed by Petitioner, a prisoner of the State of California. Petitioner also initiated a second habeas corpus petition in this Court, docketed as No. 00-20566-JW (hereafter, "2000 Habeas"). In the 1997 Habeas, the Court dismissed the petition and entered a judgment of dismissal. Petitioner moved the Court pursuant to Federal Rule of Civil Procedure 60(b) to vacate the judgment. The Court denied Petitioner's motion. Petitioner timely appealed the Order denying the motion to vacate the judgment to the Ninth Circuit (No. 16028). In the 2000 Habeas, the Court dismissed the petition as untimely and refused to give Petitioner the benefit of equitable tolling. Petitioner also appealed the judgment of dismissal in the second habeas case to the Ninth Circuit (No. 17414).

1 On March 4, 2004, the Ninth Circuit Court of Appeal issued a Memorandum Decision
2 addressing both appeals. With respect to the 1997 Habeas (16028)¹, the Ninth Circuit stated: “In
3 sum, the, the district court’s decision to deny Haney’s Rule 60(b) motion for relief from judgment
4 must be upheld because we do not think it ‘lies beyond the pale of reasonable justification under the
5 circumstances.’” (Memorandum at 3). With respect to the 2000 Habeas (17414), the Ninth Circuit
6 stated: “We conclude that thirty months delay by the district court is sufficiently extraordinary
7 circumstances out of Haney’s control to warrant equitable tolling.” (Memorandum at 4-5). The
8 Memorandum concluded “AFFIRMED in part; REVERSED in part; REMANDED.”

9 On April 14, 2004, the Clerk of the Ninth Circuit issued a certified Judgment bearing both
10 case numbers. On April 16, 2004, the Clerk of this Court filed the certified Judgment in both cases.
11 From this point, the two cases took different procedural paths.²

12 The effect of the April 14, 2004 Ninth Circuit Judgment in District Court Case No. 97-
13 20132JW, was to affirm the judgment dismissing the case. This terminated any further proceedings
14 in the case. However, when the Clerk docketed the Ninth Circuit Judgment on April 16, 2004, the
15 Clerk “reopened” the case, and it has remained reopened since that time. This has created the
16 appearance that the Court has an open case on which it has failed to take action for almost two years.
17 Since the judgment was affirmed, there was no further judicial action necessary, except for perhaps
18 the administrative act of ordering the case closed.³


23 ¹ The Ninth Circuit did not refer to the 1997 Habeas by case number. This Court cites the
24 appellate case number for clarity.

25 ² The Court notes that the 2000 Habeas was ultimately disposed on by an Order of the Ninth
26 Circuit affirming a judgment of this Court, and that this procedural history is not clear on the docket
of this Court.

27 ³ The Court is not aware of any process of the Court for administrative orders closing cases
and whether that responsibility lies with the assigned judicial officer or the Clerk of Court.

1 To remedy the appearance that the case remains pending, the Court orders the Clerk of Court
2 to close the file and to docket this Order accordingly.

3
4 Dated: February 27, 2008


JAMES WARE
United States District Judge


1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Albert Joel Kutchins
3 Attorney at Law
4 P.O. Box 5138
5 Berkeley, CA 94705

6 George Williamson
7 CA State Attorney General's Office
8 455 Golden Gate Ave, Suite 11000
9 San Francisco, CA 94102-7004

10 **Dated: February 27, 2008**

Richard W. Wieking, Clerk

11 By: 
12 Elizabeth Garcia
13 Courtroom Deputy
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28